APPENDIX A

Analysis of the Procedural Requirements of Section 8 of the Railway Labor Act and Their Substantial Satisfaction Here or the Lack of any Prejudice from any Variance from Them.

Section 8 of the Act, in subsections (a) through (n), by providing for various recitals which the agreement to arbitrate is to contain, provides various procedural requirements. These will be discussed one by one. The section provides that the agreement to arbitrate—

"(a) shall be in writing;"

—Here the agreement in fact was in writing. See Section 7(c)(3) of the National Agreements.

"(b) shall stipulate that the arbitration is had under the provisions of this Act;"

—The Agreements expressly so stipulated.

"(c) shall state whether the Board of Arbitration is to consist of three or of six members;"

—Section 7 *First* of the Act provides that if the parties do not stipulate for a board of six, there shall be a board of three, thereby indeed contemplating that the parties might in fact not stipulate for one number or the other in their agreement. Here there was no stipulation as to numbers; the carrier initiated procedures for the constitution of the standard board of three; due to the insistence of the two separate brotherhoods on one representative each, the carrier named an additional representative; and the brotherhoods did not object when the Mediation Board proceeded only to name a single neutral arbitrator as

would have been contemplated by the original procedure for a board of three. See pp. 15-16 of the Brief, above.

> "(d) shall be signed by the duly accredited representatives of the carrier or carriers and the employees, parties respectively to the agreement to arbitrate, and shall be acknowledged by said parties before a notary public, the clerk of a district court or court of appeals of the United States, or before a member of the Mediation Board, and, when so acknowledged, shall be filed in the office of the Mediation Board;"

—Here the Agreements were duly signed by the duly accredited representatives. They apparently were filed with the Mediation Board. While apparently not notarized, notarization is a formality tending to prove authenticity in the case of any dispute, and no suggestion of lack of authenticity of the National Agreements has been made here by the petitioners; indeed, they insisted that the carrier follow the requirements of those Agreements.

> "(e) shall state specifically the questions to be submitted to the said board for decision; and that, in its award or awards, the said board shall confine itself strictly to decisions as to the questions so specifically submitted to it;"

—Here the Agreements specified that disputes arising as a result of the conferences ensuing "whenever the carrier desires so to pool its cabooses" which are not resolved through conference or mediation shall be arbitrated. As developed in the Brief, the only questions passed on by the arbitrators were those as to which disputes had arisen in the course of the conferences. See Brief, pp. 13-14, above.

"(f) shall provide that the questions, or any one or more of them, submitted by the parties to the board of arbitration may be withdrawn from arbitration on notice to that effect signed by the duly accredited representatives of all the parties and served on the board of arbitration;"

—Here the parties never jointly sought to withdraw any question from arbitration.

"(g) shall stipulate that the signatures of a majority of said board of arbitration affixed to their award shall be competent to constitute a valid and binding award;"

—Here the award was signed by a majority of the arbitrators.

"(h) shall fix a period from the date of the appointment of the arbitrator or arbitrators necessary to complete the board (as provided for in the agreement) within which the said board shall commence its hearings;"

—Here the brotherhoods do not complain of any delay. Nor could they, inasmuch as any delay in the proceedings of the board simply postponed the date on which the carrier might pool its cabooses.

"(i) shall fix a period from the beginning of the hearings within which the said board shall make and file its award; Provided, that the parties may agree at any time upon an extension of this period;"

—See the comment on item (h) above.

"(j) shall provide for the date from which the award shall become effective and shall fix the period during which the award shall continue in force;"

—The National Agreements clearly contemplate that the award shall become effective forthwith upon the carrier's pooling of its cabooses, and shall continue in effect indefinitely. The award rendered herein requires the carrier to make the substitute facilities available forthwith upon pooling the cabooses. The brotherhoods raise no objection to this timing of the effective date of the award.

"(k) shall provide that the award of the board of arbitration and the evidence of the proceedings before the board relating thereto, when certified under the hands of at least a majority of the arbitrators, shall be filed in the clerk's office of the district court of the United States for the district wherein the controversy arose or the arbitration was entered into, which district shall be designated in the agreement; and, when so filed, such award in proceedings shall constitute the full and complete record of the arbitration;"

—The award and proceedings were so certified and filed with the clerk's office of the District Court for the Eastern District of Tennessee, North Eastern Division. See Pet. A26-A27.

"(1) shall provide that the award, when so filed, shall be final and conclusive upon the parties as to the facts determined by said award and as to the merits of the controversy decided;"

—The Agreements provide that the decision "shall be final and binding upon both parties." This effect is given the award by Section 9 *Second* of the Act and it is only the brotherhoods which seek to controvert the award.

"(m) shall provide that any difference arising as to the meaning, or the application of the provisions, of

an award made by the Board of Arbitration shall be referred back for a ruling to the same board, or, by agreement, to a subcommittee of such board; and that such ruling, when acknowledged in the same manner, and filed in the same district court clerk's office, as the original award, shall be a part of and shall have the same force and effect as such original award;"

—This effect is likewise given to the award by Section 9 *Third*. No occasion for an interpretation of the meaning of the award has arisen.

"(n) shall provide that the respective parties to the award will each faithfully execute the same."

—The Agreements provide that the decision "shall be final and binding upon both parties." There is no question but that an award rendered under the Railway Labor Act, as this one was agreed to be, would have this effect. It is only the brotherhoods which claim that the award is not binding.

APPENDIX B

Statement of the Brotherhood Representatives Presented to the Arbitration Board at the January, 1967, Session.

The Labor Party Members of Arbitration Board No. 292, Case A-7432, have previously advised the National Mediation Board and this Board that we are not agreeable to proceed with arbitration in the instant dispute because Article 7 of the ORC&B National Agreement of May 23, 1952 and Article 7 of the BRT National Agreement of May 25, 1951 are not applicable to the instant dispute, and as such, Arbitration Board No. 292 does not have jurisdiction in the dispute.

At the insistence of the Carrier and upon your conclusion that we must proceed to a consideration of this matter on its merits, we have convened as suggested by you. It must be understood that we do not waive any right, legal or otherwise. We object to and protest any effort on the part of this Board to arbitrate a dispute over which it does not have jurisdiction.

Article 7 of the ORC&B National Agreement of May 23, 1952 and Article 7 of the BRT National Agreement of May 25, 1951 are in effect on the Clinchfield Railroad. When the Agreements were negotiated, the Carrier had the election of preserving existing rules or practices or to adopt Article 7. By inaction, Article 7 became effective on the Clinchfield Railroad.

On or about April 2, 1965, Carrier addressed a letter to the General Chairmen of the ORC&B and BRT requesting conference to discuss a matter of mutual interest to the Carrier and the Organizations. Conference was held

on April 6, 1965 at which time Carrier advised the General Chairmen of its intention to pool cabooses in all classes of service on the railroad. The Chairmen opposed such pooling of cabooses on the basis that such pooling would not improve the service and expedite trains. Notwithstanding this, carrier issued a bulletin on the date of April 7, 1965, pooling cabooses effective April 16, 1965. Conference was held on April 12, 1965 and on request of the Chairmen, the Carrier postponed pooling of the cabooses for thirty days. During conference on May 15, 1965, Carrier was advised that the employees would take such action as was available to them to prevent pooling of cabooses.

Under date of May 17, 1965, Carrier served notice that it intended and desired to pool cabooses in all classes of service on all lines of the railroad. Subsequently, conference was held on May 28, 1965, without reaching agreement and on the same date just eleven days after the serving of the notice, carrier requested the services of the National Mediation Board. While the Board did assume jurisdiction, it suggested that further conferences should be held and such conferences were held on July 12, and 23rd, 1965 without reaching agreement. Mediation proceedings were started on September 7, 1965 and as suggested by the Mediator, a joint conference with the carrier was held at 10:00 a.m. on September 8, 1965, and at 3:00 p.m. The Case was recessed for Board consideration after approximately two hours and 15 minutes in actual mediation.

Article 7, Para. A, reads as follows:

"The employees affected by this rule and the carriers represented by the Eastern, Western and Southeastern Carriers Conference Committees, *being desirous of*

cooperating in situations where train service can be improved and trains expedited by the pooling of cabooses, adopt the following:" (underscoring supplied)

Throughout conferences, negotiation, mediation and before this Board, the employees have contended that Article 7 of the respective Agreements is applicable *only in situations where the service can be improved and trains expedited by the pooling of cabooses.* At no time has the Carrier contended or offered evidence to show this is such a situation. On the contrary, Erwin, Tennessee is located between Elkhorn, Kentucky and Spartanburg, South Carolina, 135 miles south of Elkhorn and 141 miles north of Spartanburg. No yard service is maintained at either Elkhorn or Spartanburg. All trains from either direction arriving Erwin are yarded with a complete breakup and classification necessary. Yard service is maintained and performed by yardmen at Erwin, Tennessee.

The employees vigorously contend that the provisions of Article 7 of the respective agreements are not applicable to the instant dispute because *it is not a situation where train service can be improved and trains expedited by the pooling of cabooses.*

Article 14 of the Agreement of May 23, 1952 and May 25, 1951 established a Disputes Committee which has jurisdiction over disputes involving the application of the terms of those agreements including Article 7. The parties are in dispute as to the application of Article 7 of the respective Agreements and such dispute has been submitted by the Organization to the Disputes Committees established under the respective agreements.

Therefore, it is the position of the Organizations that this Board does not have jurisdiction in the instant dis-

pute. The Labor Party Members request that the Board be recessed until a decision is rendered by the Disputes Committees and the parties have entered into an agreement to arbitrate, defining the questions to be decided, effective date and duration of the Award, etc., as required by the Railway Labor Act.

APPENDIX C

Article 14 of the National Agreements.

Any dispute arising between parties to this agreement in connection with the revision of individual agreements so as to make them conform to this agreement shall be referred jointly, or by either party, for decision to a committee, the carrier members of which shall be three members of the Carriers' Conference Committees, signatories hereto, or their successors, and the employee members of which shall be three representatives selected by the organization signatory hereto.

In the event the Committee is unable to reach a decision with respect to any such disputes, a neutral referee shall be selected by the members of the Committee, to sit with the Committee and act as a member thereof.

If a majority of the Committee is unable to agree upon the selection of a neutral referee, any three members of the Committee may request the National Mediation Board to appoint such neutral referee.

Decisions of a majority of all the members of the Committee shall be final and binding upon the parties to any dispute in which a decision may be rendered.